

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

CHRISTOPHER JON MARTINEZ, ) No. CV 11-05383-MMM (VBK)  
Petitioner, )  
 ) ORDER ACCEPTING FINDINGS AND  
 ) RECOMMENDATIONS OF UNITED STATES  
v. ) MAGISTRATE JUDGE  
 )  
GEORGE A. NEOTTI, )  
 )  
Respondent. )  
 )

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Pursuant to 28 U.S.C. §636, the Court has reviewed the Petition for Writ of Habeas Corpus ("Petition"), the records and files herein, and the Report and Recommendation of the United States Magistrate Judge ("Report").

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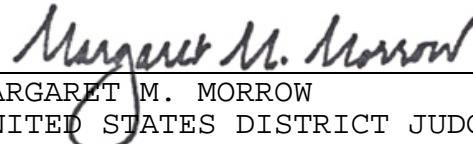
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1       **IT IS ORDERED** that: (1) the Court accepts the findings and  
2 recommendations of the Magistrate Judge, and (2) the Court declines to  
3 issue a Certificate of Appealability ("COA").<sup>1</sup>

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5 DATED: September 23, 2012

  
6 MARGARET M. MORROW  
7 UNITED STATES DISTRICT JUDGE

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15       <sup>1</sup> Under 28 U.S.C. §2253(c)(2), a Certificate of Appealability  
16 may issue "only if the applicant has made a substantial showing of the  
17 denial of a constitutional right." Here, the Court has accepted the  
18 Magistrate Judge's finding and conclusion that the Petition is time-  
19 barred. Thus, the Court's determination of whether a Certificate of  
20 Appealability should issue here is governed by the Supreme Court's  
21 decision in Slack v. McDaniel, 529 U.S. 473, 120 S. Ct. 1595 (2000),  
22 where the Supreme Court held that, "[w]hen the district court denies  
23 a habeas petition on procedural grounds without reaching the  
24 prisoner's underlying constitutional claim, a COA should issue when  
25 the prisoner shows, at least, that jurists of reason would find it  
26 debatable whether the petition states a valid claim of the denial of  
27 a constitutional right and that jurists of reason would find it  
28 debatable whether the district court was correct in its procedural  
ruling." 529 U.S. at 484. As the Supreme Court further explained:

29       "Section 2253 mandates that both showings be made before the  
30 court of appeals may entertain the appeal. Each component  
31 of the § 2253(c) showing is part of a threshold inquiry, and  
32 a court may find that it can dispose of the application in  
33 a fair and prompt manner if it proceeds first to resolve the  
34 issue whose answer is more apparent from the record and  
35 arguments." Id. at 485.

36       Here, the Court finds that Petitioner has failed to make the  
37 requisite showing that "jurists of reason would find it debatable  
38 whether the district court was correct in its procedural ruling."